

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF **CALIFORNIA**

In the Matter of the Appeal of)
MIKE BOSNICH)

For Appellant: **Mike** Bosnich,
in pro. per.

For Respondent:, Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 19058 of the Revenue and Taxation Code from the deemed denial by the Franchise Tax **Board** of the claim for refund of Hike Bosnich for refund of personal income tax in the amount of **\$1,898.00** for the year 1978.

Appeal of Mike Bosnich

The issue is whether **appellant** Mike Bosnich, a career merchant seaman and California domiciliary, was subject to California's personal income tax for 1978, Appellant spent 232 days of 1978 --board oceangoing tankers which visited California ports only **three or** four times during 1978, staying in port for only short p e r i o d s .

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable **income** of every resident of this state. Section 17014, subdivision (a), of the Revenue and Taxation Code defines "resident" to **include**:

(1) Every individual who is in this state for other than a temporary **or** transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Section 17014, subdivision (c), states also that:

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

Respondent determined that appellant was a California resident on the basis that (1) appellant, holds joint ownership with his "life partner" in a home in Riverside, California; (2) he has a California bank account ; (3) he has California doctors and lawyers; (4) he has registered to vote in California; (5) **he** has a California driver's license; (6) he owns a car which is registered and driven in California; and (7) he has no significant contacts with any other state.

Indeed, in his claim for refund, appellant stated that he was a California resident. He may, however, have meant that he was a California domiciliary. Appellant's position is that his absences are not temporary or transitory when he is absent from the state for more than one-half of any year **in** the pursuit of his occupation.

Respondent's regulations explain that whether a taxpayer's purpose **in entering** or leaving California is temporary or transitory **in character** is essentially a question of **fact** to be determined by examining all the

Appeal of Mike Bosnich

circumstances of each particular case. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b); Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The regulations explain that the underlying theory of California's definition of "resident" is that the state with which a person has the closest connections is the state of his residence (Cal. Admin. Code, tit. 18, reg. 17014-1706.6(b)). Consistently with these regulations, we have held that the connections which a taxpayer maintains with this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. (Appeal of Richards L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1935.) Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, business relationships, voting registration, the possession of a local driver's license, and ownership of real property. (See, e.g., Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, etc., Cal. St. Bd. of Equal., July 6, 1971.)

We have held in the past, specifically in cases of merchant seamen, that so long as the individual had the necessary contacts with California, the seaman's employment related absences from California were temporary and transitory in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Appellant maintains, however, that this issue has been litigated recently in the so-called, "Tesser v. State of California," case which allegedly concluded that a person who spent a significant portion of his time outside California, even though a resident of California, was not subject to California's income tax. Appellant further believes that on such authority, respondent has already granted a number of claims for refund of personal income tax filed by other merchant seamen. Appellant is unable to provide a citation to a report of the case and we have been unable to verify that such authority exists.

--Perhaps the decision referred to by appellant was one made by us in 1963. (Appeal of W. J. Sasser, Cal. St. Bd. of Equal., Nov. 5, 1963). Mr. Sasser was also a merchant seaman who spent most of his time outside California in the pursuit of his occupation during

Appeal of Mike Bosnich

the years then on appeal (1952-1955). Hr. Sasser did (1) maintain an account with a California bank with international connections, (2) register an automobile here which he provided to his father, a California resident, (3) had his federal tax returns filed by his brother, who filed them with the District Director of the Internal Revenue Service located in San Francisco, and (4) visited California relatives and friends when his ships touched California ports. On the other hand, that individual (1) owned real property in Oregon, (2) owned no property and maintained no business relationships in California, (3) visited relatives in other states when the opportunity arose, and (4) was in California only during short and irregular periods.

After examining the history of Mr. Sasser's movements before and during those years on appeal, we concluded Mr. Sasser retained a California domicile simply because he was domiciled here in 1943 when he lived here with his parents, and had never established a different domicile. But that examination also revealed that Mr. Sasser did not have ties to any one place and, more importantly, that he did not seek work which would regularly return him to California. Rather, the taxpayer would return to California only if his employment chanced to bring him here. Therefore, we also concluded that appellant's absences from the state were other than temporary and transitory in nature. Our decision in that case was not based on any conclusion that the occupational absence of a taxpayer from the state for most of the year is necessarily an absence for other than a temporary or transitory purpose. Nor do we think that such a conclusion could be a proper interpretation of the meaning of the term "resident" as defined in section 17014 of the Revenue and Taxation Code.

In contrast with the Sasser circumstances, the present appellant's contacts California and lack of contacts with other states demonstrate the present appellant's continuing tie to California, and the present appellant's absences from California must be viewed as temporary and transitory. Accordingly, we must sustain the respondent, who is prepared to abate a \$93 self-assessed estimated installment payment penalty and to refund to appellant \$46.95 of the claimed amount as excess state disability insurance payments withheld.

Appeal of Mike Bosnich

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the deemed denial by the Franchise Tax Board of the claim for refund of Mike Bosnich for refund of personal income tax in the amount of \$1,898.00 for the year 1978, be and the same is hereby modified by the abatement of a \$93.00 self-assessed estimated installment payment penalty and the refund to appellant of \$46.95 of the claimed amount as excess state disability insurance payments withheld. In all other regard's, the action of the Franchise Board is sustained.

Done at Sacramento, California, this 29th day
of July, 1981, by the State Board of Equalization,
with Board Members Mr. Dronenbufg, Mr. Reilly, Mr. Bennett
and Mr. Nevins present.

Ernest J. Dronenburg, Jk. , Chairman

George R. Reilly. , Member

William M. Bennett, Member

Richard Nevins. , Member

_____, Member